MERCATUS CENTER
GEORGE MASON UNIVERSITY

December 13, 2006

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: Docket 05-311

Dear Ms. Dortch:

Today the Mercatus Center sent via courier and e-mail, to Commissioners and their media advisors, the attached article on video franchising just published in the *Journal on Telecommunications & High Technology Law*. The article expands and updates the legal and economic analysis that Jerry Brito and I submitted in this proceeding on February 13, 2006.

The accompanying letter summarized our principal findings and conclusions thusly:

## Our Findings

- By constraining competition, local video franchising imposes significant costs on two groups of consumers. Current cable subscribers pay higher prices than they would pay if there were competition, and potential customers forego cable TV service because they believe it is too expensive at current prices.
- Two decades of studies by government agencies and independent scholars consistently find that competition leads to lower cable rates.
- The FCC has authority under several federal statutes to identify and preempt unreasonable franchising practices.
- Video franchising costs consumers approximately $10.4 billion annually in higher prices and the value of forgone services. This estimate includes the

cost to consumers of market power created by franchising, franchise fees, "nonprice concessions" by cable companies, and PEG requirements.

- Widespread video competition could create $6.3 billion in consumer benefits annually. Current subscribers in markets without wireline video competition could see their annual cable rates fall by about $86 each. Consumers who do not currently subscribe, but would subscribe at a lower, competitive price, would each gain an average of $43 annually.

## Recommendations

To promote competition, the FCC should:

- Declare unreasonable any delay in granting a franchise that exceeds some specified deadline, such as 120 days.

- Establish simple default conditions under which a new entrant would automatically receive a franchise if the local franchising authority has not acted by the deadline.

- Declare unreasonable any refusal to grant a franchise justified on the grounds of natural monopoly, reduced investment risk, or right-of-way management unless the local franchising authority presents overwhelming empirical evidence that the alleged problem exists and cannot be solved in any way other than barring new entry.

- Require local franchise authorities to explain in writing any refusal to grant a franchise.

- Preempt aspects of state level playing field laws that force entrants to make the same capital expenditures or cover the same service area as the incumbents.

- Declare unreasonable any state or local requirement that would force a new entrant to build out its network faster than the incumbent actually and originally built out its network.

- Declare unreasonable any "nonprice concessions" in franchise agreements that are not directly related to setup or operation of a cable system.

We hope this information is helpful at the Commission continues its deliberations in this proceeding.

Sincerely,

Jerry Ellig
Senior Research Fellow